LIST SHOWING THE AMENDMENTS MADE BY THE SELECT COMMITTEE ON THE CODE OF CIVIL PROCEDURE BILL.

[N. B.—The portions in square brackets are those deleted by the Committee and those in italics newly added.]

Clause 1.

1. (1) This [Act] *Regulation* may be cited as "the Code of Civil Procedure, 19 ."

Short title, commencement and extent.

(2) It shall come into force on the first day of [January] 19

(3) It shall extend to the whole of [the territories of] Mysore.

Clause 2.

2. In this Regulation, unless there is anything repugnant in the subject or context,—

Definitions.

* * *

[(3) (A) "Deputy Commissioner" includes every officer performing the duties of a Deputy Commissioner:]

* * *

(5) "Freign Court" means a Court [situate beyond the limits of the territories of Mysore] *not established or continued by the Government of Mysore:*

* * *

(13A) "Mysore Military Forces" means and includes the Mysore Imperial Service Cavalry and Transport Corps; the Local Service Troops (viz., the Barr and Silledar Troops) and the Palace Troops.

(14A) "Palace Troops" means the Body Guard (Cavalry), the Barr Battalion (Infantry), the Golundauz (Artillery), and the English Band, attached to the Palace of His Highness the Maharaja of Mysore.

(15) "Pleader" means any person *enrolled under the law for the time being in force in Mysore relating to Legal Practitioners, and* entitled to appear and plead for another in Court [,and enrolled under the law for the time being in force in the territories of Mysore relating to Legal Practitioners]:

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* * *

(17) "Public officer" means a person falling under any of the following descriptions, namely:—

(*a*) every Judge;

(*b*) *every Commissioned or Gazetted officer in the Mysore Military Forces;*

[*b*] (*c*) every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret or to preserve order, in the Court, and every person especially authorized by a Court of Justice to perform any of such duties;

[*c*] (*d*) every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

[*d*] (*e*) every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

[*e*] (*f*) every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue process, or to investigate, or to report on, any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government; and

[*f*] (*g*) every officer in the service or pay of the Government, or remunerated by fees or commission for the performance of any public duty:

* * * *

Clause 3.

"3. For the purposes of this Code, [the] *every* District Court is subordinate to the Chief Court, and every Civil Court of a grade inferior to that of a District Court and every Court of Small Causes is subordinate to the Chief Court and *the* District Court."

Subordination of Courts.

Clause 4.

"4. (1) In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force."

Savings.

[(2) In particular and without prejudice to the generality of the proposition contained in sub-section (1), nothing in this Code shall be deemed to limit or otherwise affect any remedy which a landholder or landlord may have under any law for the time being in force for the recovery of rent of agricultural land from the produce of such land.]

Clause 5 (2).

"(2) 'Revenue Court' in sub-section (1) means a Court having jurisdiction under any [local] law to entertain suits or other proceedings relating to the rent, revenue or profits of land used for agricultural purposes, but does not include a Civil Court having original jurisdiction under this Code to try such suits or proceedings as being suits or proceedings of a civil nature."

Clause 7.

"7. The following provisions shall not extend to Courts of Small Causes constituted under any law for the time being in force in [the State] *Mysore* or to [other] Courts exercising the jurisdiction of a Court of Small Causes, that is to say,—

Small Cause Courts.

(*a*) so much of the body of the Code as relates to—

(*i*) suits excepted from the cognizance of a Court of Small Causes;

(*ii*) the execution of decrees in such suits;

(*iii*) the execution of decrees against immovable property; and

(*b*) the following sections, that is to say,—

section 9,

sections 91 and 92,

sections 94 and 95 so far as they relate to injunctions and interlocutory orders, and

sections 96 to 108 [and 115.]"

Clause 9.

"9. The Courts shall (subject to the provisions herein contained) have jurisdiction

Courts to try all civil suits unless barred.

to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred *by any enactment for the time being in force.*

Explanation.—A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies."

Clause 10.

"10. No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in [the territories of] Mysore having jurisdiction to grant the relief claimed.

Stay of suit.

Explanation.—The pendency of a suit in a foreign Court does not preclude the Courts in [the territories of] Mysore from trying a suit founded on the same cause of action."

Clause 12.

[12. Where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a suit in respect of such cause of action in any Court to which this Code applies.]

Bar to further suit.

Clause 13 (f).

"(*f*) where it sustains a claim founded on a breach of any law in force in [the territories of] Mysore."

Explanation to clause 16.

"*Explanation.*—In this section "property" means property situate in [the territories of] Mysore."

Explanation II to clause 20.

"*Explanation II.*—A corporation shall be deemed to carry on business at its sole or principal office in [the territories of] Mysore or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place."

Clause 23.

"23. (1) Where the several Courts having jurisdiction are subordinate to the same Appellate Court, an application under section 22 shall be made to the Appellate Court."

To what Court application lies.

(2) Where such Courts are subordinate to different Appellate Courts [but to the

Chief Court], the application shall be made to the [said] Chief Court.

Clause 29.

"29. Summonses issued by any Civil or Revenue Court situate beyond the limits of [the territories of] Mysore may be sent to the Courts in [the territories of] Mysore and served as if they had been issued by such Courts :

Service of foreign summonses.

Provided that the Government has, by notification in the official Gazette, declared the provisions of this section to apply to such Courts."

Clause 43.

"43. A decree of any Civil or Revenue Court in British India or of any Civil or Revenue Court established by the Governor-General of India in Council in [the territories of] Mysore or in the territories of any Foreign Prince or State which cannot be executed within the jurisdiction of the Court by which it was [made] *passed* may be executed in manner herein provided within the jurisdiction of any Civil Court or of any Revenue Court specially directed by Government in this behalf in [the territories of] Mysore."

Decrees of certain Courts to be executed in Mysore.

Clause 44.

"*44. The Government may, by notification in the official Gazette, declare that the decrees of any Civil or Revenue Courts situate in the territories of any Native Prince or State in alliance with His Majesty and not established or continued by the authority of the Governor-General in Council, or any class of such decrees may be executed in Mysore as if they had been passed by the Courts in Mysore.*"

Execution of decrees passed by Courts of other Native States.

Clause 48.

LIMIT OF TIME FOR EXECUTION.

"48. (1) Where an application to execute a decree not being a decree granting an injunction has been made, no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of twelve years from—

Execution barred in certain cases.

(*a*) the date of the decree sought to be executed, or,

(*b*) where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, the date of the default in making the payment or delivery in respect

of which the applicant seeks to execute the decree.

(2) Nothing in this section shall be deemed [—]

[(*a*)] to preclude the Court from ordering the execution of a decree upon an application presented after the expiration of the said term of twelve years, where the judgment-debtor has, by fraud or force, prevented the execution of the decree at some time within twelve years immediately before the date of the application. [; or]

[(*b*) to limit or otherwise affect the operation of Article 180 of the second schedule to the Indian Limitation Act, 1877.]"

Clause 54.

"54. Where the decree is for the partition of an undivided estate assessed to the payment of revenue to the Government, or for the separate possession of a share of such an estate, the partition of the estate or the separation of the share shall be made by the Deputy Commissioner or any [gazetted subordinate of the Deputy Commissioner] *revenue officer not below the rank of a Deputy Amildar* deputed by him in this behalf, in accordance with the law (if any) for the time being in force relating to the partition, or the separate possession of shares, of such estates."

Partition of estate or separation of share.

Proviso 5 to sub-clause (1) of clause 55 (re *Arrest and detention*).

"Provided, fifthly, that no person who belongs to the Mysore [Silhedar or Barr] *Military* Forces shall, so long as he belongs to such Force, be liable to be arrested for debt under any process issued by the authority of any Court of law."

Clause 58 (1).

"58. (1) Every person detained in the civil prison in execution of a decree shall be so detained,—

(*a*) where the decree is for the payment of a sum of money *not* exceeding fifty rupees, for a period of six [months] *weeks* and,

(*b*) in any other case, for a period of six [weeks] *months*:

Provided that he shall be released from such detention before the expiration of the said period of six [months] *weeks* or six [weeks] *months* as the case may be,—

(i) on the amount mentioned in the warrant for his detention being

Detention and release.

paid to the officer in charge of the civil prison, or

(ii) on the decree against him being otherwise fully satisfied, or

(iii) on the request of the person on whose application he has been so detained, or

(iv) on the omission by the person, on whose application he has been so detained, to pay subsistence allowance:

Provided, also, that he shall not be released from such detention under clause (ii) or clause (iii), without the order of the Court."

Clause 60.

ATTACHMENT.

"60. (1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses, or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf:

Property liable to attachment and sale in execution of decree.

Provided that the following particulars shall not be liable to such attachment or sale, namely:—

(*a*) the necessary wearing apparel cooking vessels, beds and bedding of the judgment-debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman;

(*b*) tools of artizans, and where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section;

(*c*) houses and other buildings (with the materials and the sites thereof and the land immediately

appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him;

(*d*) books of account;

(*e*) a mere right to sue for damages;

(*f*) any right of personal service;

(*g*) stipends and gratuities allowed to pensioners of the Government *or payable out of any service family pension fund notified in the official Gazette by Government in this behalf* and political pensions;

(*h*) allowances (being less than salary) of any public officer or of any servant of a railway company or local authority while absent from duty;

(*i*) the salary or allowances equal to salary of any such public officer or servant as is referred to in clause (*h*), while on duty, to the extent of—

(i) the whole of the salary, where the salary does not exceed twenty rupees monthly;

(ii) twenty rupees monthly, where the salary exceeds twenty rupees and does not exceed forty rupees monthly and

(iii) one moiety of the salary in any other case;

(*j*) the pay and allowances of persons to whom the Indian Articles of War [and the Mysore Military Regulation, 1899,] apply *and of those belonging to the Mysore Military Forces*;

(*k*) the wages of labourers and domestic servants whether payable in money or in kind;

(*l*) an expectancy of succession by survivorship or other merely contingent or possible right or interest;

(*m*) a right to future maintenance;

(*n*) any allowance declared by any law passed by the Government of Mysore to be exempt from liability to attachment or sale in execution of a decree; [and]

[(*o*) where the judgment-debtor is a person liable for the payment of land-revenue, any movable property which, under any law for the time being applicable to him,

is exempt from sale for the recovery of an arrear of such revenue;]

[(p)] (o) the arms, horse, clothes, equipments, regimental accoutrements and necessaries of the members of the Mysore [Silhedar and Barr] *Military* Forces, [and the pay and allowances or any part thereof of such members below the rank of a jamadar in a Silhedar Force and below the rank of a Subedar in a Barr Force];

[(q)] (p) where the decree relates to a debt due or contracted by an officer who has insured his life under the rules in force relating to the Mysore State Life Insurance, any bonus payable or paid thereunder to such officer or in the event of his death to his nominee or other person or persons entitled to such bonus under the said rules;

[(r)] (q) any amount payable by the Military Department to the *members of the Mysore Military Forces* [officers and men of the Local and Imperial Service Regiments in Mysore] out of a Retiring Fund; *and*

(r) all Inam lands granted to religious and charitable institutions and for the maintenance of persons rendering service therein.

Explanation.—The particulars mentioned in clauses (*g*), (*h*), (*i*), (*j*), (*k*), (*n*), (*p*), (*q*) *and* (*r* [and the pay and allowances specified in clause (*p*)] are exempt from attachment or sale whether before or after they are actually payable.

(2) Nothing in this section shall be deemed—

(*a*) to exempt houses and other buildings (with the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment) from attachment or sale in execution of decrees for rent of any such house, building, site or land, or *in execution of decrees for enforcing a mortgage or charge in respect of such house, building, site or land, or*

(*b*) to affect the provisions of the Army Act, [1881], or of any similar law for the time being in force."

Clause 70.

"70. (1) The Government may make rules consistent with the aforesaid provisions—

Rules of procedure.

* * * *

(*b*) conferring upon the Deputy Commissioner or any [gazetted subordinate of the Deputy Commissioner] *revenue officer not below the rank of a Deputy Amildar* all or any of the powers which the Court might exercise in the execution of the decree if the execution thereof had not been transferred to the Deputy Commissioner;

(*c*) providing for orders made by the Deputy Commissioner or [any gazetted subordinate of the Deputy Commissioner] *other revenue officer*, or orders made on appeal with respect to such orders, being subject to appeal to, and revision by, superior revenue authorities as nearly as may be as the orders made by the Court, or orders made on appeal with respect to such orders, would be subject to appeal to, and revision by, appellate or revisional Courts under this Code or other law for the time being in force if the decree had not been transferred to the Deputy Commissioner.

(2) A power conferred by rules made under sub-section (1) upon the Deputy Commissioner or [any gazetted subordinate of the Deputy Commissioner] *other revenue officer*, or upon any appellate or revisional authority, shall not be exercisable by the Court or by any Court in exercise of any appellate or revisional jurisdiction which it has with respect to decrees or orders of the Court."

Jurisdiction of Civil Courts barred.

Proviso (*a*) *to sub-clause* (*1*) *of clause 73.*

DISTRIBUTION OF ASSETS.

"73. (1) Where assets are held by a Court and more persons than one have, before the receipt of such assets, made application to the Court for the execution of decrees for the payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realization, shall be rateably distributed among all such persons.

Proceeds of execution sale to be rateably distributed among decree-holders.

Provided as follows:—

(*a*) Where any property is sold subject to a mortgage or charge, the mortgagee or incumbrancer *as such* shall not be entitled to share in any surplus arising from such sale;"

* * * *

Clause 76.

"76. [(1) A commission for the examination of any person may be issued to any Court (not being the Chief Court) having jurisdiction in the place in which the person to be examined resides.

Commission to another Court.

(2) Every Court receiving a commission for the examination of any person under sub-section (1) shall examine him or cause him to be examined pursuant thereto, and the commission, when it has been duly executed, shall be returned together with evidence taken under it to the Court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order.]

"Power of Government to make rules regarding commissions for local investigations."

The Government may make rules as to the persons to whom commissions to make local investigations may be issued."

Clauses 77 and 78.

"77. In lieu of issuing a commission the Court may issue a letter of request to examine a witness residing at any place not within [the territories of] Mysore."

Letter of request.

"78. The provisions as to the execution and return of commissions for the examination of witnesses shall apply to commissions issued by Courts situate beyond the limits of [the territories of] Mysore."

Commissions issued by foreign Courts.

Clause 89.

ARBITRATION.

"89. (1) Save in so far as is otherwise provided by any [other] law for the time being in force, all references to arbitration whether by an order in a suit or otherwise, and all proceedings thereunder, shall be governed by the provisions contained in the Second Schedule.

Arbitration.

(2) The provisions of the Second Schedule shall not affect any arbitration pending at the commencement of this Code but shall apply to any arbiration after that date under any agreement or reference made before the commencement of this Code."

Clause 94.

"94. In order to prevent the ends of justice from being defeated, the Court may, if it is so prescribed,—

Supplemental proceedings.

(*a*) issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not give security for his appearance, and if he fails to comply with any order for security, commit him to the civil prison: *provided that the Court shall not order the arrest or detention of a woman in the course of a suit for recovery of money*;

(*b*) direct the defendant to furnish security to produce any property belonging to him and to place the same at the disposal of the Court or order the attachment of any property;

(*c*) grant a temporary injunction and in case of disobedience commit the person guilty thereof to the civil prison and order that his property be attached and sold;

(*d*) appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property;

(*e*) make such other interlocutory orders as may appear to the Court to be just and convenient."

Clause 98.

"*98. (1) Where an appeal is heard by a bench of two or more Judges, the appeal shall be decided in accordance with the opinion of such judges or of the majority (if any) of such Judges.*

Decision where appeal heard by two or more Judges.

(2) Where there is no such majority which concurs in a judgment varying or reversing the decree appealed from, such decree shall be confirmed."

Clause 102.

[102. No second appeal shall lie in any suit of the nature cognizable by Courts of

No second appeal in certain suits.

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Small Causes, when the amount or value of the subject-matter of the original suit does not exceed one hundred rupees:

Provided that the Government may, by notification in the official Gazette, extend the provisions of this section to such suits, the amount or value of the subject-matter of which does not exceed two hundred rupees.]

Clause 115.

"115. The Chief Court may call for the record of any case which has been decided by any Court subordinate to [such] *the* Chief Court and in which no appeal lies thereto, and if such subordinate Court appears—

Revision.

(*a*) to have exercised a jurisdiction not vested in it by law, or

(*b*) to have failed to exercise a jurisdiction so vested, or

(*c*) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the Chief Court may make such order in the case as it thinks fit."

Clauses 123 and 124.

"123. (1) A Committee to be called the Rule Committee, shall be constituted at Bangalore.

Constitution of the Rule Committee.

(2) The Committee shall consist of the following persons, namely:—

(*a*) [not less than two Judges] *a Judge* of the Chief Court, *who shall be the President of the Committee*;

(*b*) [a Judge of a subordinate Civil Court] *two Judges of Civil Courts subordinate to the Chief Court*; *and*

[(*c*) the Government Advocate; and]

[(*d*)] (*c*) [an advocate of] *two advocates enrolled in* the Chief Court.

(3) The members of [such] *the* Committee shall be appointed by the Chief Judge. [who shall also nominate one of their number to be President:

Provided that, if the Chief Judge elects to be himself a member of the Committee, he shall be the President of the Committee.]

(4) Each member of [such] *the* Committee shall hold office for such period as may be prescribed by the Chief Judge in

this behalf; and whenever any member retires, resigns, dies or ceases to reside in [the territories of] Mysore or becomes incapable of acting as a member of the Committee, the [said] Chief Judge may appoint another person to be a member in his stead.

(5) There shall be a Secretary to [such] *the* Committee, who shall be appointed by the Chief Judge. [and shall receive such remuneration as may be provided in this behalf by the Government.]

Committee to report to Chief Court.

124. [Every] *The* Rule Committee shall make a report to the Chief Court on any proposal to annul, alter or add to the rules in the First Schedule or to make new rules, and before making any rules under Section 122, the Chief Court shall take such report into consideration."

Clauses 130 and 131.

Power to make rules as to matters other than procedure.

"130. *The Chief Court shall have power to call for returns and may, with the previous sanction of Government, prescribe forms and make and issue any rules regulating its own practice and the practice of the Civil Courts subject to its superintendence with respect to any matter other than procedure.*"

Publication of rules.

131. "*Rules made in accordance with Section 130 shall be published in the official Gazette and shall, from the date of publication or from such other date as may be specified, have the force of law.*"

Clauses 137 and 138.

Language of subordinate Courts.

"137. (1) The language which, on the commencement of this Code, is the language of any Court subordinate to the Chief Court shall continue to be the language of such subordinate Court until the Government otherwise directs.

(2) The Government may declare what shall be the language of any such Court [and in what character applications to and proceedings in such Court shall be written.]

(3) Where this Code requires or allows anything other than the recording of evidence to be done in writing in any such Court, such writing may be in English; but if any party or his pleader is unacquainted with English a translation into the language of the Court shall, at his request, be supplied to him; and the Court shall make such order as it thinks fit in respect of the payment of the costs of such translation."

"138. (1) The Government may, by notification in the official Gazette, direct with respect to any Judge specified in the notification, or falling under a description set forth therein, that evidence in cases in which an appeal is allowed shall be taken down by him in the English language and in manner prescribed.

Power for Government to require evidence to be recorded in English.

(2) Where a Judge is prevented by any sufficient reason from complying with a direction under sub-section (1), he shall record the reason and cause the evidence to be taken down in writing from his dictation in open Court.

[(3) The Government may, by notification published in the official Gazette, revoke or vary a direction notified under sub-section (1).]"

Clause 152 A.

"*152 A. No Judge or other public officer shall be answerable for any error, misstatement or omission in any proclamation of sale issued under the provisions of this Code, unless the same has been committed or made dishonestly.*"

Indemnity of Judges, etc.

SCHEDULE I.

Order I, Rules 10 and 11.

"10. (1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may, at any stage of the suit, if satisfied that the suit has been instituted through a *bona fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff, upon such terms as the Court thinks just.

Suit in name of wrong plaintiff.

(2) The Court may at any stage of the proceedings either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

Court may strike out or add parties.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

(4) Where a defendant is added the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.

Where defendant added, plaint to be amended.

(5) Subject to the provisions of [the Indian Limitation Act, 1877] *the Mysore Limitation Regulation*, Section 22, [as applicable to Mysore], the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.

[11] (6) The Court may give the conduct of the suit to such [person] *plaintiff or defendant* as it deems proper."

Conduct of suit.

Order III, Rule 3.

"3. (1) Processes served on the recognized agent of a party shall be as effectual as if the same had been served on the party in person, unless the Court otherwise directs.

Service of process on recognized agent.

(2) The provisions for the service of process on a party to a suit shall apply to the service of process on his recognized agent."

Order V, Rules 25 to 28.

"25. Where the defendant resides out of [the territories of] Mysore, and has no agent in [the territories of] Mysore, empowered to accept service, the summons shall be addressed to the defendant at the place where he is residing and sent to him by post, if there is postal communication between such place and the place where the Court is situate.

Service where defendant resides out of [the territories of] Mysore and has no agent.

[Provided that if there is a British Resident or Agent or a Superintendent appointed by the British Government or a Court established or continued by the authority of the Governor-General in Council in or for the territory in which the defendant resides, the summons may be sent to such Resident, Agent, Superintendent or Court, by post or otherwise, for the purpose of being served upon the defendant; and if the Resident, Agent or Superintendent or the Judge of the Court

returns the summons with an endorsement under his hand that the summons has been served upon the defendant in manner hereinbefore directed, such endorsement shall be evidence of the service.]"

Rule 26.

26. "*Where Government has by notification in the official Gazette declared that any summons issued under this Code may be served by any Court or authority of the place where the defendant is residing, the summons may be sent to such Court or authority by post or otherwise for the purpose of being served upon the defendant; and if the Court or authority returns the summons with an endorsement signed by the Judge or other Officer of the Court or authority that the summons has been served upon the defendant in manner hereinbefore directed, such endorsement shall be evidence of the service.*"

Service in foreign territory through a Court or other authority.

"27. Where the defendant is a public officer *not belonging to the Mysore Military Forces* or is the servant of a railway company or local authority, the Court may, if it appears to it that the summons may be most conveniently so served, send it for service on the defendant to the head of the office in which he is employed, together with a copy to be retained by the defendant."

Service on civil public officer or on servant of railway company or local authority.

"28. Where the defendant is an officer or a soldier *in the Mysore Military Forces* the Court shall send the summons for service to his commanding officer together with a copy to be retained by the defendant."

Service on officer and soldiers.

Order VII, Rule 10 (1).

"10. (1) [The plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.] *If, at any stage of the suit, the Court finds that it should have been instituted in another Court, the plaint shall be returned to be presented to such Court.*"

Return of plaint.

Order XI, Rule 10.

10. No exceptions shall be taken to any affidavit in answer, but the sufficiency [or otherwise] of any such affidavit objected to as insufficient shall be determined by the Court.

No exception to be taken.

Order XVI, Rule 2.

"2 (1) The party applying for a summons shall, before the summons is granted and within a period to be fixed, pay into Court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the Court in which he is required to attend, and for one day's attendance.

Expenses of witness to be paid into Court on applying for summons.

(2) In determining the amount payable under this rule, the Court may, in the case of any person summoned to give evidence as an expert, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case.

Experts.

(3) [Where the Court is subordinate to a Chief Court regard shall be had, in fixing the scale of such expenses, to any rules made in that behalf] *In fixing the scale of such expenses, regard shall be had to any rules made by Government in that behalf.*"

Scale of expenses.

Order XVI, Rule 16.

"16. (1) A person so summoned and attending shall, unless the Court otherwise directs, attend at each hearing until the suit has been disposed of.

When they may depart.

(2) On the application of either party and the payment through the Court of all necessary expenses (if any), the Court may, *if sufficient cause is shown*, require any person so summoned and attending to furnish security to attend at the next or any other hearing or until the suit is disposed of and, in default of his furnishing such security, may order him to be detained in the civil prison."

Order XVI, Rule 19.

"19. No one shall be ordered to attend in person to give evidence unless he resides—

No witness to be ordered to attend in person unless resident within certain limits.

(*a*) within the local limits of the Court's ordinary original jurisdiction, or

(*b*) without such limits but at a place less than fifty or (where there is railway [or steamer] communication [or other established public conveyance] for five-sixths of the distance between the place where he resides and the place where the Court is situate) less than

two hundred miles distance from the Court-house."

Order XX, Rule 18.

Decree in suit for partition of property or separate possession of a share therein.

"18. Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then,—

(1) if and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Deputy Commissioner or any [gazetted subordinate of the Deputy Commissioner] *Revenue officer not below the rank of a Deputy Amildar* deputed by him in this behalf, in accordance with such declaration and with the provisions of Section 54;"

* * *

Order XXI, Sub-Rule (4) of Rule 33.

"(4) Any money ordered to be paid under this rule may be recovered as though it were payable under *a* decree for the payment of money."

Rule 48.

Attachment of salary or allowances of public officer or servant of railway company or local authority.

"48. (1) Where the property to be attached is the salary or allowances of a public officer or of a servant of a railway company or local authority, the Court, whether the judgment-debtor or *the* disbursing officer is or is not within the local limits of the Court's jurisdiction, may order that the amount shall, subject to the provisions of Section 60, be withheld from such salary or allowances either in one payment or by monthly instalments as the Court may direct; and, upon notice of the order to such officer as the Government may by notification in the official Gazette appoint in this behalf, the officer or other person whose duty it is to disburse such salary or allowances shall withhold and remit to the Court the amount due under the order, or the monthly instalments, as the case may be.

(2) Where the attachable proportion of such salary or allowances is already being withheld and remitted to a Court in pursuance of a previous and unsatisfied order of attachment, the officer appointed by the Government in this behalf shall forthwith return the subsequent order to the Court issuing it with a full statement of all the particulars of the existing attachment.

(3) Every order made under this rule, unless it is returned in accordance with the provisions of sub-rule (2), shall, without further notice or other process, bind the Government or the Railway Company or local authority, as the case may be, while the judgment-debtor is within the [local limits to which this Code for the time being extends] *limits of Mysore and while he is beyond those limits, if he is in receipt of any salary or allowances payable out of Mysore Revenues, or the funds of a Railway Company carrying on business within the jurisdiction of the Government of Mysore, or local authority in Mysore*; and the Government or the Railway Company or local authority, as the case may be, shall be liable for any sum paid in contravention of this rule."

Rule 49.

* * * * *

"(4) Every application for an order under sub-rule (2) shall be served on the judgment-debtor and on his partners, or such of them as are within [the territories of] Mysore.

(5) Every application made by any partner of the judgment-debtor under sub-rule (3) shall be served on the decree-holder and on the judgment-debtor, and on such of the other partners as do not join in the application and as are within [the territories of] Mysore.

* * * *

Rule 50 (1).

"50. (1) Where a decree has been passed against a firm, execution may be granted—

Execution of decree against firm.

(*a*) against any property of the partnership;

(*b*) against any person who has appeared in his own name under Rule 6 or Rule 7 of Order XXX or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner;

(*c*) against any person who has been individually served as a partner with a summons and has failed to appear:

Provided that nothing in this sub-rule shall be deemed to limit or otherwise affect the provisions of Section 247 of the Indian Contract Act, 1872, as [applicable] applied to Mysore."

Rule 52.

"52. Where the property to be attached is in the custody of any Court or public officer, the attachment shall

Attachment of property in custody of Court or public officer.

be made by a notice to such Court or officer requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Court from which the notice is issued:

Provided that, where such property is in the custody of a Court, any question of title or priority arising between the decree-holder and any other person, not being the judgment-debtor, claiming to be interested in such property by virtue of any assignment *or* attachment or otherwise, shall be determined by such Court."

Rules 66 and 66A.

"66. (1) Where any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court.

Proclamation of sales by public auction.

(2) Such proclamation [shall be drawn up after notice to the decree-holder and the judgment-debtor and] shall state the time and place of sale, and specify as fairly and accurately as possible—

(a) the property to be sold:

* * *

* * *

[66A. No Judge or other Public Officer shall be answerable for any error, misstatement or omission in any proclamation under Rule 66, unless the same has been committed or made dishonestly.]

Indemnity of Judges, etc.

Rule 71.

"71. Any deficiency of price which may happen on a resale by reason of the purchaser's default, and all expenses attending such resale, shall be certified to the Court [or to the Deputy Commissioner, as the case may be,] by the officer or other person holding the sale, and shall, at the instance of either the decree-holder or the judgment-debtor, be recoverable from the defaulting purchaser under the provisions relating to the execution of a decree for the payment of money."

Defaulting purchaser answerable for loss on resale.

Order XXII, Rule 9.

"9. (1) Where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action.

Effect of abatement or dismissal.

(2) The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee or the receiver

in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal; and if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

(3) "The provisions of Sections *4 and* 5 of *the Mysore Limitation Regulation* [Indian Limitation Act, 1877, as extended to Mysore,] shall apply to applications under Sub-Rule (2)."

Order XXV, Rule 1.

Security for Costs.

"1. (1) Where, at any stage of a suit, it appears to the Court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiffs are, residing out of [the territories of] Mysore, and that such plaintiff does not, or that no one of such plaintiffs does, possess any sufficient immovable property within [the territories of] Mysore other than the property in suit, the Court may, either of its own motion or on the application of any defendant, order the plaintiff or plaintiffs, within a time fixed by it, to give security for the payment of all costs incurred and likely to be incurred by any defendant.

When security for costs may be required from plaintiff.

(2) Whoever leaves [the territories of] Mysore under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs shall be deemed to be residing out of [the territories of] Mysore within the meaning of Sub-Rule (1).

Residence out of [the territories of] Mysore.

(3) On the application of any defendant in a suit for the payment of money, in which the plaintiff is a woman, the Court may, at any stage of the suit, make a like order if it is satisfied that such plaintiff does not possess any sufficient immovable property within [the territories of] Mysore."

Order XXVI, Rules 3, 4, 5, 7 and 17.

"3. A commission for the examination of a person who resides within the local limits of the jurisdiction of the Court issuing the same may be issued to any person whom the Court thinks fit to execute *it*."

Where witness resides within Court's jurisdiction.

"4. (1) Any Court may in any suit issue a commission for the examination of—

Persons for whose examination commission may issue.

(*a*) any person resident beyond the local limits of its jurisdiction;"

(*b*) any person who is about to leave such limits before the date on which he is required to be examined in Court; and

(*c*) any civil or military officer of the Government who cannot, in the opinion of the Court, attend without detriment to the public service.

(2) Such commission may be issued to any Court, not being the Chief Court, within the local limits of whose jurisdiction such person resides, or to any pleader or other person whom the Court issuing the commission may appoint.

[(3) The Court on issuing any commission under this rule shall direct whether the commission shall be returned to itself or to any subordinate Court.]"

"5. Where any Court to which application is made for the issue of a commission for the examination of a person residing at any place not within [the territories of] Mysore is satisfied that the evidence of such person is necessary, the Court may issue such commission or a letter of request."

Commission or request to examine witness not within [the territories of] Mysore.

"7. Where a commission has been duly executed, it shall be returned, together with the evidence taken under it to the Court from which it was issued, [unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order]; and the commission and the return thereto and the evidence taken under it shall (subject to the provisions of the next following rule) form part of the record of the suit."

Return of commission with depositions of witnesses.

"17. (1) The provisions of this Code relating to the summoning, attendance and examination of witnesses, and to the remuneration of and penalties to be imposed upon, witnesses, shall apply to persons required to give evidence or to produce documents under this Order whether the commission in execution of which they are so required has been issued by a Court situate within or by a Court situate beyond the limits of

Attendance and examination of witnesses before Commissioner.

[the territories of] Mysore, and for the purposes of this rule the Commissioner shall be deemed to be a Civil Court."

* * *

Order XXIX, Rule 2.

"2. Subject to any [statutory] provision *of law* regulating service of process, where the suit is against a corporation, the summons may be served—

Service on corporation.

(*a*) on the secretary, or on any director, or other principal officer of the corporation, or

(*b*) by leaving it or sending it by post addressed to the corporation at the registered office, or if there is no registered office then at the place where the corporation carries on business."

Order XXX, Rules 1 (1), 3 and 4 (1).

"1. (1) Any two or more persons claiming or being liable as partners and carrying on business in [the territories of] Mysore may sue or be sued in the name of the firm (if any) of which such persons were partners at the time of the accruing of the cause of action, and any party to a suit may in such case apply to the Court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in such firm, to be furnished and verified in such manner as the Court may direct."

Suing of partners in name of firm.

"3. Where persons are sued as partners in the name of their firm, the summons shall be served either—

Service.

(*a*) upon any one or more of the partners, or

(*b*) at the principal place at which the partnership business is carried on within [the territories of] Mysore upon any person having, at the time of service, the control or management of the partnership business there,

as the Court may direct; and such service shall be deemed good service upon the firm so sued, whether all or any of the partners are within or without [the territories of] Mysore.

Provided that, in the case of a partnership which has been dissolved to the knowledge of the plaintiff before the institution of the suit, the summons shall be served upon every person within [the territories of] Mysore whom it is sought to make liable."

"4. (1) Notwithstanding anything contained in Section 45 of the Indian Contract Act, 1872, as [applicable] *applied* to Mysore, where two or more persons may sue or be sued in the name of a firm under the foregoing provisions and any of such persons dies, whether before the institution or during the pendency of any suit, it shall not be necessary to join the legal representative of the deceased as a party to the suit."

Right of suit on death of partner.

Order XXXI, Rule 2.

"2. Where there are several trustees, executors or administrators, they shall all be made parties to a suit against one or more of them.

Joinder of trustees, executors and administrators.

Provided that the executors who have not proved their testator's will, and trustees, executors and administrators outside [the territories of] Mysore need not be made parties."

Order XXXII, Rules 4 (1), 9 (1) and 16.

"4. (1) Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit:

Who may act as next friend or be appointed guardian for the suit.

Provided that the interest of [a] such *a* person is not adverse to that of the minor and that he is not, in the case of *a* next friend, a defendant, or, in the case of a guardian for the suit, a plaintiff."

"9. (1) Where the interest of the next friend of a minor is adverse to that of the minor or where he is so connected with a defendant whose interest is adverse to that of the minor as to make it unlikely that the minor's interest will be properly protected by him, or where he does not do his duty, or, during the pendency of the suit, ceases to reside within [the territories of] Mysore, or for any other sufficient cause, application may be made on behalf of the minor or by a defendant for his removal, and the Court, if satisfied of the sufficiency of the cause assigned, may order the next friend to be removed accordingly, and make such other order as to costs as it thinks fit."

Removal of next friend.

"16. Nothing in this Order shall be construed to affect or in any way derogate from the provisions of any *other* law for the time being in force relating to suits by or against minors or by or against lunatics or other persons of unsound mind.

Savings.

Order XXXIII, Rules 6 and 9.

"6. Where the Court sees no reason to reject the application on any of the grounds stated in Rule 5, it shall fix a day (of which at least ten days' clear notice shall be given to the opposite party and the [Government Pleader] *Deputy Commissioner*) for receiving such evidence as the applicant may adduce in proof of his pauperism, and for hearing any evidence which may be adduced in disproof thereof."

Notice of day for receiving evidence of applicant's pauperism.

"9. The Court may, on the application of the defendant, or of the [Government Pleader,] *Deputy Commissioner* of which seven days' clear notice in writing has been given to the plaintiff, order the plaintiff to be dispaupered—

Dispaupering.

(*a*) if he is guilty of vexatious or improper conduct in the course of the suit;

(*b*) if it appears that his means are such that he ought not to continue to sue as a pauper; or

(*c*) if he has entered into any agreement with reference to the subject-matter of the suit, under which any other person has obtained an interest in such subject-matter."

Order XXXIV, Rules 5 (1) and 14.

"5. (1) Where on or before the day fixed the defendant pays into Court the amount declared due as aforesaid, together with such subsequent costs as are mentioned in Rule 10, the Court shall pass a decree—

Final decree in suit for sale.

(*a*) ordering the plaintiff to deliver up the documents which under the terms of the preliminary decree he is bound to deliver up,

and, if so required,

(*b*) ordering him [if necessary] to re-transfer the mortgaged property as directed in the said decree,

and, also, if necessary,

(*c*) ordering him to put the defendant in possession of the property."

"*14. Nothing in this order shall be construed to give any party a remedy which he has not got by his contract or the law applicable thereto, or to take away or in any manner limit any remedy that he is entitled to under such contract or such law.*"

Order XXXV, Rule 4.

"4. (1) At the first hearing the Court may—

Procedure at first hearing.

(*a*) declare that the plaintiff is discharged from all liability to the defendants in respect of the thing claimed, award him his costs, and dismiss him from the suit; or

(*b*) if it thinks that justice or convenience so require, retain all parties until the final disposal of the suit.

(2) Where the Court finds that the admissions of the parties or other evidence enable it to do so, it may adjudicate the title to the thing claimed.

(3) Where the admissions of the parties do not enable the Court so to adjudicate, it may direct—

(*a*) that *an issue or* issues between the parties be framed and tried, and

(*b*) that any claimant be made a plaintiff in lieu of or in addition to the original plaintiff,

and shall proceed to try the suit in the ordinary manner."

Order XXXVII, Rules 1 and 2 (1).

"1. This order shall apply only to Courts having ordinary original civil jurisdiction to which the Government may, by notification in the official Gazette, [supply them.] *apply it.*

Application of Order.

[In case of such application, the Government may direct by whom any of the powers and duties incident to the provision so applied shall be exercised and performed and make any rules which it thinks requisite for carrying into operation the provisions so applied.

Within one month after such notification has been published, such provision shall apply accordingly and the rules so made shall have the force of law.

The Government may alter or cancel such notification.]"

"2. (1) [In any Court to which this order applies,] All suits upon bills of exchange, hundis or promissory notes may, in case the plaintiff desires to proceed hereunder, be instituted by presenting a plaint in the form prescribed; but the summons shall be in Form No. 4 in Appendix B or in such other form as may be from time to time prescribed."

Institution of summary suits upon bills of exchange, etc.

Order XXXVIII, Rule 1 (b).

"1. Where at any stage of a suit, other than a suit of the nature referred to in Section 16, clauses (*a*) to (*d*), the Court is satisfied, by affidavit or otherwise,—

Where defendant may be called upon to furnish security for appearance.

(*a*) * * * * * * *

(*b*) that the defendant is about to leave [the territories of] Mysore under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit."

Order XLI, Rule 9 (2) and Rule 10.

"9 (2) Such book shall be called the Register of Appeals."

Register of Appeals.

"10 (1) The Appellate Court may, in its discretion, either before the respondent is called upon to appear and answer or afterwards on the application of the respondent, demand from the appellant security for the costs of the appeal, or of the original suit, or of both :

Appellate Court may require appellant to furnish security for costs.

Provided that the Court shall demand such security in all cases in which the appellant is residing out of [the Territories of] Mysore and is not possessed of any sufficient immovable property within [the Territories of] Mysore other than the property (if any) to which the appeal relates.

Where appellant resides out of [the Territories of] Mysore.

(2) Where such security is not furnished within such time as the Court orders, the Court shall reject the appeal."

Order L, Rule 1 (first para.)

1. The provisions hereinafter specified shall not extend to Courts of small causes constituted under [the] *any* law for the time being in force in *Mysore* [the State relating to the constitution of Small Cause Courts] or to Courts exercising the jurisdiction of a Court of Small Causes [under the same] that is to say—

Small Cause Courts.

* * * * * * *